

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA,	:	
	:	Criminal Case
Plaintiff	:	No. 20-CR-00239-TSE
v.	:	
	:	
EL SHAFEE ELSHEIKH	:	August 19, 2022
	:	9:06 a.m.
Defendant	:	
.....	:

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE T.S. ELLIS, III
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

P R O C E E D I N G S

COURTROOM CLERK: Court calls criminal case United States of America versus El Shafee Elsheikh, Case Number 2020-CR-239. May I have appearances, please, first for the government.

MR. FITZPATRICK: Good morning, Your Honor. Dennis Fitzpatrick, Raj Parekh, John Gibbs, Aidan Grano-Mickelsen, Alicia Cook, as well as Nicole Lopez and Jennifer Donnarumma on behalf of the United States. Your Honor, after the victim impact testimony this morning, Mr. Parekh will be making the arguments for the government.

THE COURT: All right. Thank you. Good morning to all of you. Is anybody left back at the office?

MR. PAREKH: Good morning, Your Honor.

THE COURT: All right. Who is here on behalf of the defendant, Mr. El Shafee Elsheikh.

MR. DEUBLER: Zachary Deubler for Mr. Elsheikh, along with Yancey Ellis, Nina Ginsberg, and Ed MacMahon. And the defendant is also present.

THE COURT: All right. Yes. Good morning, Mr. Elsheikh.

All right. In case there is any curiosity, I will note - because otherwise Mr. Ellis, Yancey Ellis, would be deeply concerned if I didn't mention it - there is no relationship between Mr. Yancey Ellis and me.

1 Am I correct, Mr. Ellis?

2 MR. ELLIS: Yes, sir. Thank you.

3 THE COURT: You're welcome. I wouldn't want you stayed
4 by any false impression. And you wouldn't -- I joke, of course,
5 but it's important to note.

6 All right. The matter is before the Court for
7 sentencing, this defendant having been found guilty by a jury
8 after a -- Mr. Fitzpatrick, was it seven or eight days?

9 MR. FITZPATRICK: The trial days? I think it may have
10 been more than that. I lost track.

11 MR. PAREKH: It was March 29th that the trial started,
12 and the jury returned its verdict on April 14th, Your Honor, of
13 2022.

14 THE COURT: So it was about a 15-day trial.

15 MR. PAREKH: A little over two weeks, Your Honor.
16 That's correct.

17 THE COURT: All right. After a 15-day trial, a jury
18 convicted Mr. El Shafee Elsheikh of all counts in the
19 indictment. There were eight of them. He was convicted of
20 conspiracy to commit hostage-taking resulting in death, in
21 violation of Section 1203 of Title 18. He was convicted of
22 hostage-taking resulting in the death of James Wright Foley,
23 also a felony, in violation of the same statute. He was
24 convicted of hostage-taking resulting in the death of
25 Kayla Jean Mueller, also in violation of that same statute, a

1 felony. And he was convicted of hostage-taking resulting in the
2 death of Steven Joel Sotloff, also a felony violation of the
3 same statute. And he was convicted of hostage-taking in the
4 death of Peter Edward Kassig, also a violation of that same
5 provision, a felony.

6 And he was convicted of conspiracy, engaging in a
7 conspiracy to murder United States citizens outside of the
8 United States, in violation of Section 2332(b)(2), and he was
9 convicted of engaging in a conspiracy to provide material
10 support to terrorists, resulting in the death of the people that
11 I mentioned.

12 And he was convicted finally, in the final count, of
13 engaging in a conspiracy to provide material support to a
14 designated Foreign Terrorist Organization, ISIS, and that
15 conspiracy resulted in the death, in violation of yet another
16 statute.

17 So we are here today for the Court to decide what
18 sentence to impose on this defendant. Let me inquire, to begin
19 with, Mr. Deubler, have you had an adequate opportunity to
20 review the presentence investigation report, and to review it
21 with your client?

22 MR. DEUBLER: Yes, Your Honor. Both the draft report
23 and the final.

24 THE COURT: All right. And, Mr. Parekh, have you had
25 an adequate opportunity to review the presentence report, and to

1 review it with your colleagues?

2 MR. PAREKH: Yes, Your Honor.

3 THE COURT: All right. Now, there were, of course,
4 some objections, Mr. Deubler, that you raised. I think some
5 were resolved, but some remain. What objections do you have
6 today for the Court to consider?

7 MR. DEUBLER: The only objections I will be addressing
8 today, Your Honor, are the guidelines enhancement. So that's
9 the six-level sexual exploitation enhancement, the obstruction
10 of justice -- two-level obstruction of justice enhancement, and
11 the leadership role enhancement.

12 THE COURT: So those are the objections that you are
13 asserting, and any other objections, you are not continuing to
14 assert?

15 MR. DEUBLER: Correct, Your Honor. They just dealt
16 with material that we thought was irrelevant, but has no bearing
17 on today's sentencing.

18 THE COURT: Well, that was your position.

19 MR. DEUBLER: That was our position.

20 THE COURT: You're not asking for me to rule on it?

21 MR. DEUBLER: No, Your Honor.

22 THE COURT: All right. So they will remain in the
23 presentence investigation report.

24 Now, Mr. Parekh, does the government have any
25 objections or corrections to the presentence report?

1 MR. PAREKH: No, Your Honor.

2 THE COURT: All right. We'll begin first with,
3 Mr. Deubler, you can tell me -- although I've read your
4 memorandum and I've read the government's memorandum, so I have
5 a pretty good idea of the arguments, but you have an opportunity
6 now to address each of them.

7 Let's begin with the -- what's the first one you
8 mentioned, obstruction?

9 MR. DEUBLER: The sexual exploitation.

10 THE COURT: Oh, yes. That's related to Kayla Mueller?

11 MR. DEUBLER: Correct, Your Honor.

12 THE COURT: All right. What's your argument? You may
13 repeat that.

14 MR. DEUBLER: Yes, Your Honor. In examining this
15 six-level enhancement, in the case of jointly undertaking
16 criminal activity, the government correctly points out that the
17 Court should examine three primary factors: Whether the sexual
18 exploitation was within the scope, in furtherance, and was
19 reasonably foreseeable in connection with that criminal
20 activity.

21 A proper understanding of the timeline of this case is
22 necessary in order for this Court to properly evaluate it. As
23 the government stated in its position on sentencing, the bulk of
24 the email ransom demands concerning Ms. Mueller with the Mueller
25 family occurred in May, July, and August of 2014. At some point

1 in September of 2014, Ms. Mueller was moved out of the control
2 of the Beatles group into an ISIS leader's home, Abu Sayyaf. I
3 believe the Court will remember that there was a military raid
4 conducted on that particular residence.

5 THE COURT: I also remember there was testimony about
6 what occurred there, and I also recall there were more than one
7 witness who testified.

8 MR. DEUBLER: Correct, Your Honor.

9 THE COURT: All right. Go on.

10 MR. DEUBLER: At some point that transition from
11 The Beatles' custody into Abu Sayyaf's custody, we are unable --
12 we don't know when that happened. We do know that in September,
13 that same month, the Muellers received their last ransom email
14 communications on September 19th, 2014. So we don't know if
15 that happened immediately before or immediately after the
16 transfer to Abu Sayyaf's house.

17 That was the end of The Beatles' involvement with
18 Ms. Mueller. None of the hostages at trial mentioned that
19 they --

20 THE COURT: So your point is that this conspiracy
21 involves only The Beatles.

22 MR. DEUBLER: In terms of what is reasonably -- whether
23 the sexual exploitation component was reasonably foreseeable to
24 The Beatles and was in furtherance of that conspiracy, it is our
25 position that it is not. Because The Beatles were concerned

1 with raising funds for ISIS and forcing foreign and sovereign
2 governments to take certain political and military actions in
3 their various email demands.

4 The tragic, needless, and unfortunate - and, quite
5 frankly, disgusting - sexual abuse that occurred to the Yazidi
6 women and Ms. Mueller was not in furtherance of that goal --

7 THE COURT: I prefer the word "horrendous."

8 MR. DEUBLER: Horrendous, Your Honor. Perfectly
9 adequate word. I don't know what other word there is to
10 describe it. But that conduct was not in furtherance of
11 The Beatles group's goals of holding hostages.

12 And the very final interaction -- or the very final
13 piece of evidence that we have --

14 THE COURT: You recall, don't you, that one of
15 The Beatles - it might have been Elsheikh - told Ms. Mueller:
16 You're going to be held forever. Do you recall that?

17 MR. DEUBLER: Yes, Your Honor.

18 THE COURT: Why doesn't that make it clear that the
19 conspiracy was indeed to hold her forever for all of their
20 purposes, and there's no doubt that Mr. El Shafee Elsheikh knew
21 that -- in fact, knew that it was part of ISIS's view that it
22 was appropriate to have sex with captured women?

23 MR. DEUBLER: Two points to that, Your Honor. First
24 is, we heard a lot of very disturbing testimony that The Beatles
25 terrorized their various hostages for the purpose of terrorizing

1 them. If the United States Government had offered the amount of
2 ransom money for Ms. Mueller's release on September 19th, 2014,
3 I think I'm comfortable saying that she would have been
4 released.

5 THE COURT: Why are you comfortable in saying that?

6 MR. DEUBLER: Well, because all of the other hostages,
7 their governments who paid the ransom demands, those hostages -
8 and many of them testified in front of Your Honor - were
9 released. So that's why I say I'm comfortable with saying that.

10 THE COURT: All right. Go on.

11 MR. DEUBLER: The second point is, none of the female
12 hostages experienced any -- from what we know, from what the
13 evidence shows, experienced any sexual abuse while in the
14 custody of The Beatles. Therefore, the actions --

15 THE COURT: They weren't in the custody of The Beatles.
16 They were in the custody of ISIS, not The Beatles.

17 MR. DEUBLER: Correct, Your Honor. While The Beatles
18 were interacting with them, there was -- there were many
19 horrendous complaints about physical abuse, but no sexual abuse.

20 And the government points to one of Mr. Elsheikh's
21 media interviews conducted four years after the fact in which he
22 doesn't explicitly -- well, he says he doesn't disavow ISIS's
23 practice of holding slaves. That was one media interview
24 conducted four years after the fact. That doesn't affect the
25 analysis of whether, at the time, The Beatles knew that

1 Ms. Mueller and the Yazidi women were going to be sexually
2 abused when they were transferred into Abu Sayyaf's custody
3 and --

4 THE COURT: They don't have to know, do they? It has
5 to be reasonably foreseeable.

6 MR. DEUBLER: Correct, Your Honor.

7 THE COURT: All right. And the fact that he said
8 something four years later, are you telling me that you think he
9 changed his view? That four years after the incidents, he then
10 had a different view about abuse of women that he didn't have
11 back then?

12 MR. DEUBLER: No, Your Honor. But it --

13 THE COURT: I don't think so.

14 MR. DEUBLER: Right, Your Honor. But that does not
15 mean his personal views meant that al Baghdadi's and
16 Abu Sayyaf's treatment of the Yazidi women and Ms. Mueller were
17 in furtherance of the conspiracy.

18 THE COURT: All right.

19 MR. DEUBLER: Your Honor, I don't want to belabor the
20 point, so the rest of the argument is laid out in my brief. But
21 for those reasons, we do object to that enhancement, Your Honor.

22 THE COURT: All right. Mr. Parekh, you may respond.

23 MR. PAREKH: Just briefly, Your Honor.

24 As the Court stated, the question is whether this is
25 reasonably foreseeable conduct. And as the Court stated in its

1 order on March 24, 2022, the fact that Mueller and Mulla were
2 forcibly confined in the same facilities at the same times,
3 during which time conspirators were actively soliciting ransom
4 payments from Mueller's family, rebuts the contention that Mulla
5 and Mueller were victims of completely separate conspiracies.

6 The government takes issue with the defense's
7 contention that they were out of the control of The Beatles.
8 While they may not have been in the physical control of
9 The Beatles in September and thereafter, The Beatles certainly
10 had control of Kayla Mueller. Otherwise, they would not have
11 been soliciting ransom payments --

12 THE COURT: Well, isn't your argument, put simply, that
13 the conspiracy does not end with anything The Beatles do? That
14 it goes beyond The Beatles?

15 MR. PAREKH: That's correct, Your Honor.

16 THE COURT: And isn't your argument that it isn't just
17 The Beatles; after all, the Beatles wouldn't have had the
18 authority to do what they did without al-Baghdadi and everyone
19 else at the top. Am I right?

20 MR. PAREKH: Correct, Your Honor.

21 THE COURT: Is that your argument?

22 MR. PAREKH: Yes, Your Honor.

23 THE COURT: All right. Go on.

24 MR. PAREKH: And so the email on September 19th to the
25 Mueller family is continuing to seek ransom payments, even while

1 Kayla Mueller is in the custody of the Sayyafs, or soon to be in
2 the custody of the Sayyaf residence. And that's where she was
3 being repeatedly raped by Abu Bakr al-Baghdadi.

4 And, of course, as Your Honor knows, there's the email
5 in February of 2015 announcing Kayla Mueller's death, which came
6 from the same Safe-mail account that was being used all along to
7 communicate with the Mueller family. So this was a continuing
8 conspiracy, Your Honor.

9 And the defense notes that there's no evidence that
10 Elsheikh was linked to any of the publications that were found
11 in the Sayyaf residence. Well, the government's argument is not
12 that Elsheikh is responsible for creating the contents of the
13 documents; rather, it is his statements and the evidence at
14 trial that established that he was familiar with and knew ISIS's
15 interpretations of Islamic law justifying enslavement and
16 sexual abuse of non-Muslim women. And thus, that's the
17 reasonably foreseeable link to his ISIS co-conspirators' sexual
18 exploitation of Mueller during her continued captivity, which is
19 most relevant here, Your Honor.

20 And the Court even stated that the slavery documents
21 espouse ISIS's support for the capture of hostages and slaves,
22 and the defendant's corresponding statements demonstrate his
23 knowledge of and support for ISIS's objectives and activities.

24 And so the Court can, and should, infer that those
25 documents that were found at the Sayyaf residence, the same

1 individual who was holding Kayla when she was being raped by
2 Baghdadi, that those documents are quite probative that this was
3 reasonably foreseeable to Elsheikh. Because years later, when
4 he's talking not just to Jenan Moussa, but also to
5 *The Washington Post*, he's repeating statements that are very,
6 very close in content to those documents, and even uses the word
7 "concubine." And, as we state in our position paper, that word
8 was used in one of the documents that was located at the Sayyaf
9 residence during the 2015 raid.

10 So for all those reasons, Your Honor, we think you
11 should apply the enhancement.

12 I would also note, Your Honor correctly recognized at
13 the Kotey sentencing hearing, on page 7 of the transcript, that
14 there is evidence for this defendant. And we understand why it
15 didn't apply to Kotey. He didn't have a chance to object to
16 certain evidence that was adduced during Elsheikh's trial. But
17 it's quite different for Elsheikh, who we didn't have a plea
18 agreement with, there were no stipulated offense levels. And so
19 it's relevant, and you should apply it in Elsheikh's case,
20 Your Honor.

21 THE COURT: All right. What's the second argument that
22 you wish to raise, Mr. Deubler? Is it the obstruction? Is that
23 the one?

24 MR. DEUBLER: Yes, Your Honor.

25 THE COURT: All right. I'll hear you on that.

1 MR. DEUBLER: Your Honor, I have no intention of
2 relitigating the weeks-long suppression hearing that we all went
3 through in November of last year. I'm just going to hit some of
4 my highlights.

5 THE COURT: For that, I commend you.

6 MR. DEUBLER: Simply, Your Honor, Mr. Elsheikh's
7 inability to carry his evidentiary burden at that November 2021
8 hearing does not mean that his declaration is a perjurious
9 statement. By way of corroboration, Mr. Kotey gave a number of
10 statements to the government and to the FBI regarding abuse that
11 he underwent and that he personally observed while at SDF
12 facilities. And though these statements were not enough to
13 convince Your Honor that Mr. Elsheikh's statements should be
14 declared involuntary and suppressed, they do lend enough support
15 to his declaration to stave off a perjury finding. And I just
16 have four examples, Your Honor.

17 One, in Mr. Elsheikh's declaration, he claims he was
18 beaten by the SDF when they discovered that he had been giving
19 his true name and identity to the United States
20 Department of Defense rather than to SDF investigators. In
21 Kotey's debriefing sessions, Kotey states that when the SDF
22 tried to talk to Mr. Elsheikh, he stuck with his fake name and
23 ignored the SDF. They struck him repeatedly and stated that
24 Elsheikh was not going to lie to them and be truthful with the
25 Americans.

1 Second, Mr. Elsheikh claimed that the SDF pushed him
2 down a flight of stairs. Kotey stated that he was also pushed
3 down a flight of stairs, and, quote, "landed on a pile of
4 people. Kurds in military clothing were beating everyone with
5 plastic pipes."

6 Third, Mr. Elsheikh claimed that his last uncoerced
7 media interview took place in 2018. Mr. Kotey states that his
8 last, quote, "voluntary interview" was in the beginning of 2019.

9 And finally, Your Honor --

10 THE COURT: I never heard testimony from Kotey in that
11 regard, and I never had to consider whether that statement was
12 accurate, truthful, or otherwise.

13 MR. DEUBLER: Correct, Your Honor. We did submit the
14 government's proffer letter detailing all of this at the
15 hearing. And I would -- just to respond to Your Honor's point,
16 Mr. Kotey made these statements to FBI agents under a
17 plea agreement. Lying to the FBI is a crime, and being
18 untruthful with the government is also a breach of his
19 plea agreement. So if the government thought that Mr. Kotey was
20 lying, they could have charged him with a crime, seek the same
21 obstruction enhancement --

22 THE COURT: But they didn't have to. Why -- I don't
23 know why you asked me to draw that strained inference. You
24 know, he's already subject to several life terms, and they ought
25 now to prosecute him for being untruthful in a proffer?

1 MR. DEUBLER: No, but they would have --

2 THE COURT: I don't think so.

3 MR. DEUBLER: No, Your Honor. But they could have
4 sought to be released from the plea agreement that requires them
5 to make best efforts to transfer him after 15 years to the UK.
6 Or simply, they could have sought an obstruction of justice
7 enhancement during his sentencing. They did none of those
8 things.

9 So the government, at least, doesn't think they are
10 outright lies, and they lend just enough credibility to
11 Mr. Elsheikh's declaration to stave off a perjury enhancement.

12 That's all, Your Honor.

13 THE COURT: All right. Mr. Parekh?

14 MR. PAREKH: Your Honor, just to pick up on that last
15 point, Kotey's debriefs is an ongoing process. Just because the
16 government hasn't opined on the truthfulness or veracity of
17 Kotey's statements at this point in time in no way means that
18 we're vouching for the credibility of those statements right
19 now.

20 As Your Honor knows, he's going to be serving a life
21 term imprisonment. His cooperation agreement exists for life,
22 and that's going to be a process that unfolds over many years.
23 Moreover, the point here is that Elsheikh submitted a false
24 declaration to Your Honor. Kotey didn't do that. Kotey didn't
25 litigate his statements. He pleaded guilty, and he did not

1 provide a statement under penalty of perjury the way Elsheikh
2 did.

3 Two points, Your Honor. One, we agree with the defense
4 that Your Honor does need to make, by a preponderance of the
5 evidence, a perjury finding under Fourth Circuit case law, and
6 we cited that in our position on sentencing.

7 And along with that, Your Honor, on the SDF abuse
8 allegations, Your Honor has issued an extremely detailed,
9 thorough opinion that -- where Your Honor found that the SDF
10 officials who testified were credible, and the defendant's
11 claims were not credible. These are not the sort of allegations
12 where you can have it both ways. Either the abuse occurred or
13 it didn't occur. And Your Honor found at numerous points during
14 the opinion that you issued, after hearing testimony for
15 multiple days, that the SDF's testimony was credible and the
16 defendant's account was not.

17 But even putting aside the SDF abuse allegations, which
18 we believe were proven to not be true, and we stand by that,
19 let's put that aside for one moment, Your Honor. His
20 declaration is full of willful misstatements, false testimony
21 that he provided to Your Honor in the form of a declaration
22 under penalty of perjury.

23 And I would just direct Your Honor to Paragraph 8 of
24 his declaration, where Elsheikh says, under penalty of perjury,
25 to this Court: "The FBI told me there was no lawyer for me, and

1 that getting one here was going to be extremely difficult, given
2 the unusual situation I was in. I told the agents I did not
3 want to speak with anyone until I got my lawyer, and refused to
4 sign the sheet of paper. Despite my requests for a lawyer, the
5 agent kept trying to speak with me. I had to repeat my request
6 for a lawyer multiple times." And it continues, where it claims
7 that the lawyers [sic] used a joke to lure him into the
8 interview.

9 Your Honor, the defense doesn't rebut this at all. And
10 Your Honor can find just on those statements alone, as the Court
11 did in its opinion, that Elsheikh lied. Here you have testimony
12 from Special Agent Chiappone, from the suppression hearing on
13 November 18th, 2021, a brief series of questions about those
14 very statements:

15 "Did either you or Special Agent Nutter tell him there
16 was not going to be any lawyer for him, and that getting one
17 here was going to be extremely difficult given the unusual
18 situation he was in?"

19 "No, sir."

20 "Did the defendant tell you that he did not wish to
21 speak with anyone until he got his lawyer?"

22 "No, sir, he did not."

23 "Did the defendant ever ask for a lawyer at any point
24 during the March 27, 2018 interview with them?"

25 "No, sir, he did not."

1 "Did you use any jokes that the defendant made to lure
2 him into waiving his Miranda rights and speaking voluntarily
3 with you?"

4 "No, sir, we didn't use any jokes to lure him."

5 And then Special Agent Nutter testified before this
6 court and indicated the same. And, as Your Honor knows, your
7 opinion states that you found the testimony of
8 Special Agents Chiappone and Nutter to be credible.

9 And so putting aside those SDF allegations, Your Honor
10 can find, just on Paragraph 8 alone of Elsheikh's declaration,
11 that he gave false testimony regarding a material matter with
12 the willful intent to deceive, rather than as a result of
13 confusion, mistake, or faulty memory.

14 Thank you.

15 THE COURT: Mr. Deubler, the third point.

16 MR. DEUBLER: Your Honor, that's the leadership
17 enhancement, and I have nothing further to add besides what's
18 already stated in my papers. So we would rest on the papers on
19 the 3B1.1 four-level leadership enhancement.

20 THE COURT: All right. Mr. Parekh?

21 MR. PAREKH: In that case, Your Honor, we'll rest on
22 our papers as well.

23 THE COURT: All right. The matter is before the Court
24 on three objections by the defendant to enhancements found by
25 the probation officer. The three enhancements were -- it's an

1 eight-level enhancement, I believe, for the sexual abuse of
2 Kayla Mueller.

3 MR. PAREKH: Six levels, Your Honor.

4 THE COURT: Six levels. And it's a two-level
5 enhancement for knowingly providing false testimony. Is that
6 correct?

7 MR. PAREKH: It is, Your Honor.

8 THE COURT: And a two-level enhancement for leadership
9 role?

10 MR. PAREKH: This would be a four-level enhancement.

11 THE COURT: Four levels because it's --

12 MR. PAREKH: It's five or more participants.

13 THE COURT: Five or more. That's right.

14 The law issued by the Supreme Court in their
15 consideration of what the guidelines require are -- the law is
16 unmistakably clear. The first step in a sentencing must be the
17 correct calculation of the guidelines. And this is so, even in
18 circumstances as are present here, when some of the issues
19 raised really don't affect the ultimate offense level
20 calculation.

21 And I think that's true here, isn't it, Mr. Parekh?

22 MR. PAREKH: Yes, Your Honor. And I don't believe
23 there's any dispute between the parties that no matter what,
24 whether you apply these enhancements or you don't apply these
25 enhancements, the correct offense level is 43, pursuant to

1 Chapter 5A of the sentencing guidelines.

2 MR. DEUBLER: That's correct, Your Honor.

3 THE COURT: All right. So I would be quite happy to
4 ignore these disputes, but it isn't appropriate. And I think
5 the Supreme Court properly says the guidelines must be
6 calculated correctly before sentence, and I think the rationale
7 for that is that it ensures that the sentencing court is fully
8 cognizant of all the facts and circumstances, and is not somehow
9 misled by facts relating to an enhancement which wouldn't or
10 shouldn't apply.

11 So all of this is by way of saying, I don't think any
12 of this affects the guidelines. Counsel have confirmed that.
13 But it must be done. That is, the Court must decide these three
14 issues even though it doesn't make any difference to the final
15 offense level calculation.

16 Now, the first point is whether the six-level
17 enhancement should apply with respect to the sexual abuse of
18 Ms. Mueller. Now, what the Court must find there is that as
19 part of the convicted conspiracy, that it was reasonably
20 foreseeable. Is that right, Mr. Parekh?

21 MR. PAREKH: Yes, Your Honor.

22 THE COURT: It is my view and my conclusion that the
23 sexual abuse of Kayla Mueller was within the scope of and in
24 furtherance of the hostage-taking and the ISIS conspiracy. I
25 don't agree that the conspiracy is limited to what The Beatles

1 did, exactly that. Yes, The Beatles were the people who caused
2 horrendous harm to these hostages, including those who were
3 killed by them.

4 I think the hostages that were killed were all killed
5 by Emwazi, except for Kayla Mueller. Is that right, Mr. Parekh?

6 MR. PAREKH: On the videos that were introduced at
7 trial, Emwazi was the beheader. With Kayla Mueller, she
8 certainly, we believe, was killed by ISIS.

9 THE COURT: Yes, I understand that. And anyway, the
10 jury accepted that.

11 MR. PAREKH: Yes, Your Honor.

12 THE COURT: Because they convicted on that count. But
13 it was ISIS's contention that some Jordanian bombing caused
14 that. Is that right?

15 MR. PAREKH: That's right, Your Honor.

16 THE COURT: All right. To go on, I think the scope,
17 that the government has persuaded me by a preponderance of the
18 evidence that the probation officer's conclusion is correct;
19 that is, that the sexual abuse of Kayla Mueller -- and no one
20 can doubt that that occurred, sexual abuse by this al-Baghdadi.
21 And by the way, refresh my recollection on what ultimately
22 happened to el- Baghdadi.

23 MR. PAREKH: Your Honor, he was killed by the
24 United States Government in October of 2019.

25 THE COURT: Yes. I knew that, but I think it's

1 important to note that.

2 All right. I think that sexual abuse was within the
3 scope of and in furtherance of the conspiracy that Mr. Elsheikh
4 was convicted for. And I think it was reasonably foreseeable to
5 him that sexual abuse of Ms. Mueller or any other female would
6 have been -- would have occurred.

7 And in this regard, there was evidence submitted that
8 he - admittedly, subsequent to this, but I don't think his views
9 changed - endorsed the ISIS view that women could be enslaved.
10 That is, non-Muslim women could be enslaved. Indeed, he told
11 the reporter that there's a whole jurisprudence about slavery
12 and the rights of slaves and the rights of slave owners. And I
13 have no doubt that at the time all of this occurred, that was
14 his view too. I don't think his view ever changed.

15 So I think the documents and the testimony establish
16 that it was reasonably foreseeable to him that Kayla Mueller
17 would be sexually abused by al-Baghdadi. I'm not going to
18 proceed to recite all of the testimony. There was testimony
19 about recovered ISIS documents from the Sayyaf residence that
20 contained similar statements about Muslims [sic] not having any
21 protection in the Islamic State, and that it's permissible to
22 shed their blood and take their money and abuse them.

23 I think it was also significant that Mr. Elsheikh used
24 the term "concubine" in that interview. One of the ISIS
25 documents mentions that concubines -- that including concubines

1 for unmarried men was present.

2 Again, in summary, I think that the sexual abuse of
3 Kayla Mueller by al-Baghdadi was within the scope of the
4 convicted conspiracy, and that it was reasonably foreseeable to
5 Mr. Elsheikh that that would occur to her.

6 I also recall testimony that she was told that she
7 would be held forever. There wasn't any -- I think that
8 statement was made to her by who, Mr. Parekh?

9 MR. PAREKH: Released hostage Frida Saide.

10 THE COURT: Yes, that's what she testified. But one of
11 The Beatles said that to her. Am I correct?

12 MR. PAREKH: Yes, Your Honor. My best recollection is
13 that she was referring to the three Beatles collectively.

14 THE COURT: Yes. But in any event, that's what
15 The Beatles knew. So I don't have any doubt that the
16 enhancement for sexual abuse of Kayla Mueller was properly
17 included by the probation officer, and so that will be added.

18 We turn next to the obstruction of justice. I think
19 Mr. Deubler makes an important argument, because 3C1.1 should be
20 appropriately cabined. It shouldn't be easily applied, because
21 defendants have the right to assert their innocence, and when
22 they assert their innocence and that isn't credible, it isn't
23 perjury. They're entitled to do that.

24 The reason that I conclude that the enhancement is
25 appropriately imposed in this case, as the probation officer

1 concluded -- I don't give any weight, of course, to the
2 probation officer's conclusion. I have to determine it on the
3 basis of the record presented to me. Now, that record includes
4 my rulings in the suppression hearing, and I think I wrote an
5 order in the suppression hearing in which I said quite clearly
6 that I didn't find Mr. Elsheikh's testimony -- not his
7 testimony. His statements credible.

8 And these were statements that he made under penalty of
9 perjury. Is that right, Mr. Parekh?

10 MR. PAREKH: Yes, that is correct.

11 THE COURT: So I have already concluded that his
12 statements were false. They were clearly material, and I think
13 the enhancement was appropriately imposed by the probation
14 officer.

15 I had to make an independent perjury analysis before
16 applying that, and I did so. I found, and I find today, by more
17 than a preponderance of the evidence - although the standard is
18 preponderance - that he gave false testimony, that it was
19 material, and it was with the intent to deceive rather than the
20 result of any confusion or mistake or faulty memory.

21 And I didn't believe it. I didn't find it credible. I
22 didn't think it was true. I did accept the testimony of the
23 officers who testified, but anybody who has been before me in
24 the past 35 years knows that I do not always accept the
25 testimony of law enforcement officers, and I have, on more than

1 one occasion, rejected it. The fact that they're
2 law enforcement officers does not guarantee that they are always
3 truthful. My experience over the last almost nine decades of
4 being on the planet is no human beings are always truthful,
5 whether they're law enforcement officers or judges or
6 defendants.

7 And so I have made a careful examination of these
8 declarations in support of his motion to suppress alleging that
9 he made involuntary statements while being severely abused, and
10 I find that that was false testimony. It did concern a material
11 matter, and it wasn't a result of confusion, mistake, or faulty
12 memory.

13 And let me end this discussion by saying that I'm
14 always careful about 3C1.1. It should not be applied in a way
15 that really penalizes a defendant from asserting his innocence
16 or otherwise saying things. And although I know this isn't
17 material to the guideline calculation, I nonetheless have to pay
18 attention to it. And I have.

19 I think I should point out, in the end, I don't really
20 think that his false statements in support of his motion to
21 suppress are really going to have any material effect on my
22 sentencing decision. It really won't. But, as the
23 Supreme Court has made clear, I need to calculate the guidelines
24 correctly.

25 And the enhancement is appropriately applied by the

1 probation officer, and I find by a preponderance of the evidence
2 that all of the requirements are met. I just point out that, in
3 the end, the fact that he wasn't truthful on his statements in
4 support of his motion to suppress are not going to be material
5 to me in what sentence I impose.

6 Now we come to the third one. I should also mention
7 that the way I look at these 3C1.1, when it's in a statement in
8 support of a motion to suppress, is I have to identify the
9 perjurious statement, and I do that. And I think the government
10 has done it in its brief, and I agree with that. He said that
11 he made a number of statements in his statements, and I think
12 the government has correctly identified those. And the
13 government has correctly pointed out that I said in an order
14 that I didn't believe him and I believed the agents.

15 So I have identified the specific statements, and I
16 have found that they are all material and that they were false.
17 Now, when I say material, they were, I think, material to the
18 suppression motion, but I have to tell you - and it's why I make
19 this remark - I don't think it's material to my sentencing
20 decision. But I think they were material to the process in
21 which they were submitted.

22 Now we come to -- and I think I've already said I
23 didn't think they were the product of mistake or confusion.
24 These were allegations that I found were false of torture and
25 abuse and that sort of thing. And I think I should also

1 reflect, as both counsel know, but for those who are present,
2 that I did hear testimony from several persons who were guards
3 at the prisons run by the SDF; that is, the Kurds, where
4 Mr. Elsheikh was held before he was brought to the
5 United States.

6 Now the leadership enhancement under 3B1.1. I think it
7 is clear that in order to qualify for that enhancement, the
8 defendant doesn't have to be an organizer or leader of all of
9 the participants involved in the conspiracy or activity, but he
10 has to be an organizer or a leader of one or more other
11 participants. And here, of course, the conspiracy is not
12 limited to The Beatles. There were guards who followed their
13 orders and others. And he was clearly a leader of them.

14 So I think the notion that this applies only to the
15 four -- three Beatles. It's three, isn't it?

16 MR. PAREKH: Yes, Your Honor.

17 THE COURT: The three Beatles is not accurate. And
18 more than one of those Beatles could be a leader and an
19 organizer, and I think Mr. El Shafee Elsheikh qualifies for
20 that. The evidence at trial I think made clear that the three
21 of them occupied positions of leadership or authority over the
22 other ISIS conspirators. Certainly they had leadership
23 positions over the day-to-day guards, and they also, of course,
24 made decisions about meting out punishments and inhumane
25 treatment.

1 There was also testimony from hostages who survived,
2 and that they made clear that the guards -- those other guards,
3 not the hostages, had no control over The Beatles. The Beatles
4 were the ones in charge.

5 And I think the other testimony I heard from hostages
6 made clear that there were other guards; they seemed far less
7 authoritative than The Beatles. The Beatles were really in
8 charge of the hostages. It was clear that The Beatles were
9 clothed, as it were, with badges of authority. I think one of
10 the witnesses, a former ISIS member, testified that Elsheikh was
11 armed with a Glock firearm, which he said he recognized as a
12 symbol of ISIS, I think he used -- I don't know if he used the
13 word "leadership," but ISIS hierarchy.

14 MR. PAREKH: ISIS aristocracy, Your Honor.

15 THE COURT: Aristocracy, all right. Hierarchy is fine.
16 He was up there, or he wouldn't have had that symbol.

17 So I think the leadership enhancement is appropriately
18 applied, and I find that by a preponderance of the evidence.

19 Again, I point out that this isn't material to the
20 guideline calculation. It would be the same even if the
21 enhancement of two levels were not applied. But it must be
22 determined.

23 Now, in this case -- I mean, I take into account all of
24 the testimony in determining an appropriate sentence, so even if
25 it were to be determined by an appellate court that the

1 leadership enhancement was inappropriately applied, I don't
2 think that would affect or change my decision on an appropriate
3 sentence. Because I heard an abundance of testimony over
4 two weeks about exactly what happened from hostages who
5 survived, from SDF -- or not SDF guards, but I did hear from --
6 Mr. Parekh, what was the name of the fellow that started with a
7 K? Kuzu?

8 MR. PAREKH: Omer Kuzu, Your Honor.

9 THE COURT: And he was a guard?

10 MR. PAREKH: He was a former ISIS member who testified
11 against Elsheikh.

12 THE COURT: All right. The point I'm making is I heard
13 a lot of testimony about what actually happened, and I think
14 that's what will govern my determination of an appropriate
15 sentence.

16 All right. I have made rulings. Have I omitted
17 anything, Mr. Parekh? I give you that opportunity because
18 you're the prevailing party on this dispute.

19 MR. PAREKH: I don't believe so, Your Honor. And just
20 to supplement my answer to one of your questions just now, the
21 testimony throughout the trial was that there were three main
22 Beatles. As Your Honor knows, of course, and as Your Honor
23 stated, there were many other co-conspirators involved in the
24 scheme, but the hostages consistently testified that there were
25 three main Beatles, and we've identified them as

1 Mohammed Emwazi, Alexandra Kotey, and this defendant,
2 El Shafee Elsheikh.

3 THE COURT: Yes, that's my clear impression.

4 All right. We now come to the portion of the
5 sentencing hearing where each side will have an opportunity to
6 make arguments. And I'll be asking -- well, before that, I'm
7 going to hear from the victims' families.

8 MR. FITZPATRICK: Yes, Your Honor. I was going to ask
9 when you would like to proceed with that.

10 THE COURT: Now. But I may take a recess before that.
11 Let me ask, Mr. Deubler, so I can plan for the future, does your
12 client wish to allocute?

13 MR. DEUBLER: One moment, Your Honor.

14 THE COURT: Let me tell him, Mr. Elsheikh -- we have an
15 interpreter, don't we? He speaks fluent English, having been
16 raised in the United Kingdom.

17 MR. DEUBLER: Correct, Your Honor.

18 THE COURT: All right. Mr. Elsheikh, you have an
19 absolute right to address the Court, and to say anything at all
20 you wish to the Court by way of extenuation, mitigation, or,
21 indeed, anything you think I should know before I decide what
22 sentence to impose. You're not required to say anything if you
23 don't wish to, but you have the opportunity to do so if you do.

24 I assume you've discussed that with your counsel, but
25 I'll give you a brief opportunity to do so now. And if you need

1 more time to discuss it with him, Mr. Deubler, I'll take a brief
2 recess and allow you to do that.

3 MR. DEUBLER: Your Honor, Mr. Elsheikh would like to
4 wait until the end of the hearing to make that decision, if the
5 Court permits it, before Your Honor pronounces sentence.

6 THE COURT: All right. I'll permit that.

7 MR. DEUBLER: Thank you, Your Honor.

8 THE COURT: All right. Now, Mr. Fitzpatrick or
9 Mr. Parekh, I take it there are four victims' family members who
10 are here and wish to be heard?

11 MR. FITZPATRICK: That's correct, Your Honor.

12 THE COURT: And they have an absolute right to be heard
13 under the law, appropriately. So I will hear from them. Who's
14 first?

15 MR. FITZPATRICK: First will be Daniel Ottosen.

16 THE COURT: Mr. Ottosen, good morning, sir. You may
17 come forward to the podium and we will hear you.

18 MR. FITZPATRICK: Your Honor, Mr. Ottosen's parents and
19 sister are in the audience as well.

20 THE COURT: Yes. Let me do that right now. Let me
21 acknowledge that we have here today Susanne Rye Ottosen, his
22 mother; Kjeld Rye Ottosen, his father; Daniel Ottosen, we'll
23 hear from; Javier Espinosa; Marsha Mueller; Carl Mueller;
24 Ed Kassig; and Paula Kassig are all here today. And I'm
25 acknowledging their presence.

1 Mr. Ottosen, come forward, sir.

2 MR. DANIEL OTTOSEN: Thank you, Your Honor. Silence is
3 something that has changed for me, and I know it's something
4 that have changed for a lot of people inside this room today.

5 Eight years ago I was driving around with my friend
6 Pierre Torres, and one of my good friends. I said that I think
7 I had eight month in Syria with Pierre. And we drove to
8 Great Britain, and we wanted to speak to the families and tell
9 them what we experienced in Syria, families of those who haven't
10 returned yet. And then we received the information that one of
11 our friends had been executed.

12 And Pierre and I stopped the car, and we were sitting
13 on top of a hill, and we were sitting there in silence. We just
14 watched the movie, the propaganda film. And the reason why we
15 were sitting in silence was because we were afraid. We were
16 afraid what will happen next. And we had good reason to be
17 afraid.

18 But I came home alive and I had the opportunity to go
19 back to my life, and also to hear the stories of my families, my
20 mom, my dad, my sisters, my girlfriend. And it was clear that
21 the idea of silence for them also changed. Because I don't
22 think it's the actual horror that touches us the most. For me,
23 it's always the silence, when you know that something is going
24 on that you are very afraid of.

25 I know my dad, he rode his bike a lot, probably got in

1 very good shape those 13 months while I was away, because that
2 was the only way he could be alone with his thoughts and be in
3 silence. I know my mom walked a lot, worked, and did try to
4 continue their lives, because that was their only way they could
5 be in their own heads, and that was the only way they could be
6 in silence.

7 When I was sitting in Syria and we saw one of the first
8 guys leave the room, Marcos, I remember that there was also a
9 silence afterwards. We were sitting there; nobody said anything
10 because we were afraid, would we ever go the same way. And the
11 days passed and Federico left the room. And we were sitting,
12 eight guys left; me, the German guy, Tony, and the three
13 Americans and the three British guys. And at that time, I think
14 that was the worst silence I've ever experienced, because we
15 knew that only a little part of us would ever go home.

16 The last three weeks of my time in Syria, I couldn't be
17 inside of my own head. I couldn't stand the silence in my head.
18 Sometimes it could be a relief, when some of the guards or the
19 so-called Beatles came into the room and beated us so badly,
20 because it somehow stopped my thoughts. I could relax for a
21 moment because I knew now I can only concentrate on my pain;
22 like my dad did on his bike, he only concentrated on his pain.
23 And that's much easier than being with your thoughts of not
24 knowing, not being able to do anything.

25 But one hour, two hours later, we knew that it was a

1 question of time before they will come back, and then the
2 silence continued. It would grow bigger and bigger, and, in the
3 end, the only way that I could escape my own head was to take
4 out a piece of paper and start to practice. And that piece of
5 paper, that was the farewell letter from one of my friends to
6 his family. That was his way of saying good-bye, I'm not coming
7 home, and I think I'm going to die.

8 So I was sitting there and I was using a man's death
9 letter, farewell letter, to ease my own pain in my own head, to
10 do anything to not sit there in silence and be afraid.

11 And today, it's very difficult for me when I think
12 about how I used that letter. I came out and I was released,
13 and it was amazing because so many things happened everywhere.
14 People talked to me, I could take a shower, I could go to the
15 toilet, I could do whatever I want to do. And it was amazing,
16 right until I had to sit down by myself with my own thoughts.

17 And then a huge struggle started, to be able to sit
18 down with my own thoughts. And I actually managed to do that.
19 I managed to get control of my own thoughts by somehow trying to
20 forget. And in 2017, in November, I got a small child, a small
21 kid, and he finally managed to put everything else into my head
22 than silence. I was so worried about him, and I suddenly had
23 somebody to take care of. And that was amazing, because
24 suddenly I felt like a normal person again could be together
25 with myself and my own thoughts, worrying about him instead of

1 something that happened many years ago.

2 And then suddenly, two of those Beatles guys, one month
3 later, was taken by the SDF. And things changed again. Now,
4 suddenly, I couldn't be together in my own head anymore. The
5 silence again started to yell at me. It was strange, because I
6 thought I had moved on. I thought my family suddenly was a
7 bright future for me. And this whole trial started. I didn't
8 know what to feel, what to expect, what to do. And that
9 occupied my thoughts while I was sitting there in silence.

10 And that's why, for me, it's a very, very, very big day
11 today. Because I think that silence for me, in the future, will
12 be something different. I don't have to worry about things. I
13 don't know how it will appear, how it will end up. And I think
14 all of us will sit down when we go home, in our car, in our
15 airplanes, our bikes, however we are going to get home, and
16 there will be some silence, some kind of silence.

17 And in 20 years we will sit in silence. Once in a
18 while we will think about this whole thing, the horrors and the
19 families that we suddenly got together, people that we didn't
20 know before, but suddenly now we feel like we have a connection
21 to one another. And I think I'll always think about those
22 people who occupied my thoughts, the thoughts of my parents, my
23 sisters, my girlfriend, and so many that I love; that he will
24 now sit in silence and think. And I think that's very scary.
25 Everybody who have been sitting by themselves with their own

1 thoughts knows that it can be very difficult.

2 So therefore, I don't think I will ever get over this
3 experience. I don't think I will attempt to get over this.
4 It's a part of me. I will always live with it and I will always
5 think about it. But at least some kind of justice is done, and
6 therefore, I will thank the people who have worked very hard to
7 make this happen, with all of my heart, and also from my family.
8 And I hope that everybody will have the opportunity to be in
9 silence once again.

10 Thank you.

11 THE COURT: All right. Mr. Fitzpatrick?

12 MR. FITZPATRICK: Your Honor, Diane Foley, the mother
13 of James Wright Foley.

14 THE COURT: Yes. Can you just clarify for me
15 Mr. Ottosen's relationship?

16 MR. FITZPATRICK: Mr. Ottosen was a long-serving
17 hostage. He's from Denmark.

18 THE COURT: Yes, I remember that.

19 MR. FITZPATRICK: And one poignant part of his
20 testimony was that he was very close with James Foley.

21 THE COURT: That's what I wanted you to remind me of.

22 MR. FITZPATRICK: Yes. And James recited a letter over
23 and over again to Daniel, which Daniel memorized. When he was
24 released, he recited that letter from James to James' mother and
25 father, Diane and John Foley.

1 THE COURT: Thank you for that reminder. All right.
2 Ms. Foley?

3 MS. DIANE FOLEY: Honorable Judge Ellis and all
4 dedicated attorneys here, both defense and prosecuting, I just
5 want to thank you all, thank you for all the time you've spent
6 on this. And for an opportunity also to address Elsheikh.

7 This trial has revealed the horrific human rights
8 crimes you committed while a member of ISIS from 2012 to 2015.
9 Your crimes of kidnapping, starvation, waterboard, and torture
10 have been heard by all of us in this courtroom. Hatred truly
11 overtook your humanity, El Shafee. Four Americans were drawn to
12 Syria in 2011, 2012: Journalist Steven Sotloff; our son,
13 James Foley, to bear witness to the Syrian people's yearning for
14 freedom; and compassionate aid workers Kayla Mueller and
15 Peter Kassig, to relieve their suffering.

16 Thanks to the dedicated collaboration of US and UK
17 systems of justice, you have received a humane and fair trial.
18 You had dedicated attorneys for you, El Shafee. You've been
19 found guilty and sentenced to life imprisonment in the
20 United States of America. You have been held accountable for
21 your depravity. This is essential to deter future international
22 hostage-taking and murder.

23 El Shafee, you will spend the rest of your life in
24 prison for your horrific deeds, but you too have lost. You have
25 lost your country, your citizenship, your freedom, and your

1 family. We've all lost.

2 Today is the eighth anniversary of Jim's gruesome
3 beheading. Knowing Jim, my suffering and that of our family
4 would have given Jim the deepest pain. However, Jim would also
5 want all of you to know that your hate-filled crimes did not
6 win. James Wright Foley lives on.

7 Jim would say: El Shafee, you did not kill me. I am
8 very alive in my mother, my father, my sister, and my brothers.
9 I'm alive in my family and friends, and their friends, too.

10 I'm alive in the mercy and justice of this trial. I
11 live on in those who survived your brutality, like Daniel, and
12 bravely testified on this witness stand. They've shared their
13 truth of your actions in Syria.

14 I live on in the dedication and humanity of the
15 prosecuting attorneys, of your defense attorneys, of the jury,
16 and Judge Ellis. I live on in the journalists, photographers
17 who have borne witness to this trial, and this message of strong
18 accountability around the world.

19 I live on in the stories I've told, those heard in this
20 courtroom and in the stories yet to be told. I'm alive in all
21 who aspire to moral courage in whatever they choose to do.

22 I'm alive in Steven Sotloff's 2LIVES Foundation, and in
23 the James W. Foley Legacy Foundation. I am alive in everyone
24 who promotes safety and the return of wrongful detainees and
25 hostages around the world. I live on in families who yearn for

1 the return of their loved ones, and accountability for captors.

2 In many ways, I am more alive than ever before. My
3 name and the names of Steven Sotloff, Kayla Mueller, and
4 Peter Kassig are known around the world and inspire courage in
5 journalism, government officials, and compassionate people to
6 put an end to the terror of international hostage-taking, and to
7 strengthen the safety of those who work in conflict zones.

8 I'm alive in all who have watched "Jim: The James Foley
9 Story," documentary, and are inspired to live a life of goodness
10 and compassion.

11 Love is so much stronger than hatred. I pity you,
12 El Shafee, for choosing hatred and for succumbing to a false
13 theology. Because Islam is truly a religion of mercy and
14 justice. I pray that your time in prison will give you a chance
15 to reflect, to pray, repent, and perhaps even seek to make
16 amends for the suffering you've inflicted on so many innocent
17 people.

18 The god I believe in will forgive you, if you ask. My
19 hope is that your powerful conversion will bring healing to you,
20 your families, and the world. Thank you.

21 MR. FITZPATRICK: Your Honor, this is
22 Mr. Fernando Colina. He is Diane Foley's brother-in-law,
23 Jim Foley's uncle. He was very close with Jim Foley as a child
24 and young man.

25 THE COURT: All right. Mr. Colina, I'll hear from you

1 now, sir.

2 MR. COLINA: Thank you, Your Honor. Good morning,
3 everybody. My name is Fernando Colina, I am James' uncle
4 through my marriage to Rita, who is, or was, Diane's sister.

5 THE COURT: Could I ask you to speak up a little bit
6 more, Mr. Colina? I can't hear you.

7 MR. FERNANDO COLINA: Yes. Unfortunately, my wife
8 cannot be with us today. My wife of 47 years died earlier this
9 year, but I know that everything I say here she will completely
10 agree with.

11 I met James sometime in 1974 when he was no more than
12 one year old. He let me hold him in my arms, but he truly loved
13 it more when I tossed him up in the air. And if I close my
14 eyes, I can still remember the sound of his laughter.

15 Later, he became truly another brother for my young
16 children. And on a trip to Spain, where I was born, Rita and I
17 recruited him to act as that, an older brother for our
18 six-year-old boy, Joseph, and our two-year-old girl, daughter,
19 Maria. Jim was 12 at the time. One day Joseph jumped into the
20 pool and hit his head on the side. He lost consciousness in the
21 water. And I am sure that Jim's quick response and thinking in
22 asking for help, and providing it himself, saved my son's life.

23 Looking back, I see that this was the start of the life
24 dedicated to save lives and relieving suffering. He will go on
25 to so many examples of his vocation to make this a better world

1 for all of us.

2 Jim's murder had a profound impact on me and my family.
3 Rita, Joseph, Maria, and I mourned, and are still mourning, his
4 death, as that of a son and sibling. But I won't dwell on that
5 right now. Instead, I want to call your attention to the sense
6 of injustice that we all feel, and the need to redress it to the
7 extent that it is possible.

8 The contrast between Jim and his killers couldn't be
9 starker. Their motivations couldn't be farther apart. Jim was
10 motivated by his desire for justice. He went to Syria to
11 respond to the report of the suffering. He wanted to give a
12 voice to those without one. He would have given a voice to his
13 future murderers.

14 Compare this with the motivations of his killers:
15 Revenge, senseless torture, and murder, in the interest of a few
16 seconds of a propaganda video. This is hate with a capital H.
17 Jim's motivation was love; his killers' was hate.

18 I believe that justice can only be served if Elsheikh
19 receives the maximum sentence allowable by law, and I just pray
20 for it, and ask this court to do so.

21 Thank you very much.

22 THE COURT: All right. You may be seated.

23 Ms. Prieto, is she here, Mr. Fitzpatrick?

24 MS. MONICA GARCIA PRIETO: Yes, good morning,
25 Your Honor. Good morning, everyone. Thank you.

1 For the first weeks after Javier was kidnapped, our son
2 slept on the floor to experience the same treatment that he
3 thought was suffering his father. Our daughter, four years old
4 at the time, kept calling his mobile, the one that you stole, to
5 leave messages on his voicemail imploring him to come back.
6 Every time she cried for her dad, all our neighbors could hear
7 her. Our friends, our relatives, our coworkers, everyone I knew
8 shared in our pain.

9 When you kidnap a person, you are not only destroying
10 his entire life, but also the life of every single person around
11 him. A universe of people got their lives frozen. Nothing was
12 really important anymore. Everything turn around the missing
13 person, with no more expectations in life but the end of their
14 real nightmare.

15 At least Javier made it, and survived, unlike some
16 others. But the American courts cannot provide justice to many,
17 many, many others, many other victims. Tens of thousands of
18 persons in Muslim countries, the ones that you claim to defend,
19 are still living in the same nightmare because they are not
20 lucky enough to get news about the relatives kidnapped by your
21 organization. They are still wondering if they are alive or
22 dead. And that means they will never close a chapter. They
23 were held, kidnapped by you and people like you, who only think
24 you have the power to decide about others lives.

25 I'm sure you don't care about this, but I hope you will

1 have enough time to think about them. You said you were trying
2 to build an Islamic State. You were acting like petty
3 criminals. I only hope that during your time in prison, you
4 will come to understand the extent of damage that you have
5 caused.

6 Thank you very much.

7 THE COURT: All right. And Mr. Fitzpatrick, Ms. Prieto
8 is the wife of Javier Espinosa?

9 MR. FITZPATRICK: Yes, Your Honor. Mr. Espinosa is in
10 the courtroom today. He was one of the 19 male hostages. He
11 did not testify at trial.

12 THE COURT: Yes, he's entitled to be here, and his wife
13 is entitled to make that statement.

14 Any other statements, Mr. Fitzpatrick?

15 MR. FITZPATRICK: No, Your Honor.

16 THE COURT: All right. I'm going to take a recess now
17 before I hear argument of counsel on the sentence that I should
18 impose. I haven't determined what that is. I will hear
19 argument; I will then give Mr. El Shafee Elsheikh the
20 opportunity to allocute, if he wishes. If he does not, I will
21 then impose sentence.

22 I will take a recess from now until 11 o'clock. I do
23 that because there are a number of you here, as many as 60 or 70
24 or 80 or 90, and we only have a couple of bathrooms. You may
25 have to go to different floors. So I want to give everyone an

1 opportunity. We've been here now for an hour and a half.

2 So we'll recess until 11 o'clock, at which time I will
3 hear argument from counsel on what they believe would be the
4 imposition of appropriate sentences for these convictions. And
5 then I will give the defendant an opportunity to allocute. At
6 his request, I allowed him to listen to all of this.

7 But let me point out that I will also make, as a part
8 of the record, and attached to the presentence report, all of
9 the other letters that the victims' families have submitted.
10 And I think one of the things that has been said, I want to
11 underscore.

12 Yes, this happened several years ago, and yes, the
13 trial was this year. But I hope, as a people, we will never
14 forget this. As a people, we should never forget what happened.
15 And I hope that it will be kept alive, people will write about
16 it. There is a public record as to this entire trial, what
17 people testified to, what they said, what the lawyers for the
18 government, what the lawyers for the defendant argued, and what
19 they did. All of that is in the public record. And, of course,
20 two of the victims were journalists, and there should be other
21 journalists who will write about this, keep it alive.

22 And I think that was the allocution of one of the
23 persons who spoke today, that Ms. Foley indicated that that
24 particular decedent will live on in countless ways. I want to
25 underscore one of the ways that that could happen, is for the

1 story of what happened, as told in this trial, should be kept
2 alive. Other journalists should write about it. Keep it alive.
3 We should remember this, as a people.

4 All right. Court stands in recess until 11 o'clock.

5 (Recess taken at 10:30 a.m.)

6 THE COURT: All right. At the conclusion of the last
7 session, I made clear that a part of the record would be the
8 attachments to the presentence report, which are the statements
9 of family members of the victims and other victims. But I
10 wanted to be even clearer -- I also gave Mr. El Shafee Elsheikh
11 the opportunity to allocute at the end, before I impose
12 sentence, and that's fine.

13 But I also wanted, on this record, to remind some
14 people who may not know it that in the Kotey sentencing, at the
15 government's request, I required the government -- not the
16 government, but the marshals, to bring Mr. El Shafee Elsheikh
17 here so that he could hear the statements of family members of
18 victims and others in the Kotey sentencing, so they wouldn't
19 have to do it twice.

20 And he was here. He was brought into the courtroom and
21 he did listen. And let me be clear, because I want to make that
22 portion of that transcript a part of this case and this
23 transcript as well. There was Bethany Haines and Mike Haines,
24 who are family members of British hostage David Haines, and
25 Dragana Haines as well.

1 There was Lucy Henning, a family member of
2 Alan Henning. I think both Alan Henning and
3 David Haines were British. And Alan Henning was killed.

4 Then we had also Shirley Sotloff and Art Sotloff, of
5 course family members of Steven Sotloff, a journalist who was
6 killed.

7 And then we had Ed Kassig and Paula Kassig, who were
8 family members of Peter Kassig, a hostage aid worker, who was
9 killed.

10 I want to be sure I get this right, so Mr. Parekh and
11 Mr. Deubler, if I make a mistake, correct me, please. Have I
12 made one so far?

13 MR. PAREKH: No, Your Honor.

14 MR. DEUBLER: No, Your Honor.

15 THE COURT: All right. Then we come to Marsha Mueller
16 and Carl Mueller, who spoke at the sentencing, who are family
17 members of Kayla Mueller, who was an aid worker. Then we have,
18 who spoke at the Kotey sentencing, Michael Foley, the brother of
19 James Foley, a journalist; we also heard from
20 Radwan Safarjalany, who was a friend of Kayla Mueller, and
21 Mohammed Mahmoud, an associate of Peter Kassig's.

22 Those were the people who spoke at the Kotey
23 sentencing. Is that right, Mr. Parekh?

24 MR. PAREKH: Yes, Your Honor.

25 THE COURT: Now, that transcript needs to be made a

1 part of this second, because Mr. El Shafee Elsheikh was brought
2 here at the Court's order so that he could hear those victims'
3 statements at that time. And that should be made clear.

4 So now that we've heard these statements by victim
5 families -- and I think it's important, for example, for people
6 to know that Daniel Rye Ottosen was a witness. He was a hostage
7 and released after some time, and he was a witness in the trial
8 of El Shafee Elsheikh. Is that correct, Mr. Parekh?

9 MR. PAREKH: Yes, Your Honor.

10 THE COURT: All of that should be clear in the record,
11 and we have clarified. Of course, we know about Ms. Foley and
12 Mr. Colina and Ms. Prieto. That should complete that record.

13 We're now at the point where counsel can offer their
14 arguments on what they think an appropriate sentence is in this
15 case. Mr. Parekh, you may go first.

16 MR. PAREKH: Thank you, Your Honor. As Your Honor
17 knows from our sentencing memorandum, the United States
18 respectfully requests that you impose eight concurrent terms of
19 life imprisonment for all eight charges on which the defendant
20 was indicted and found guilty by the jury.

21 While a life sentence is mandated for the first five
22 counts, we believe the imposition of a life term of imprisonment
23 for Counts 6, 7, and 8 is the only appropriate and just sentence
24 for those charges as well. Not simply because the advisory
25 guidelines call for life imprisonment, but because a lifetime in

1 prison is warranted for Elsheikh under all of the 3553(a)
2 sentencing factors.

3 The Court is, of course, fully acquainted with the
4 facts of this case, but I would like to just underscore some
5 points and supplement the reasons why the brutal callousness of
6 the horrifying hostage-taking scheme that Elsheikh and his
7 co-conspirators carried out on behalf of ISIS have earned him
8 nothing short but a lifetime in prison for all eight counts.

9 In March and April of this year, the Court, the jury,
10 and the public heard the testimony of 35 witnesses, and saw
11 volumes of exhibits that were introduced and admitted during
12 Elsheikh's trial. Among those 35 witnesses, the families of the
13 four deceased American victims testified, 10 released hostage
14 victims testified, multiple United Kingdom law enforcement
15 personnel, FBI, and Department of Defense witnesses testified.
16 Various expert witnesses testified. Former ISIS member Omer
17 Kuzu testified against the defendant, and during pretrial
18 proceedings, as Your Honor alluded to this morning, three Syrian
19 Democratic Forces officials testified in this courtroom, the
20 first time the SDF has ever testified in any U.S. court.

21 The trial illustrated the importance of always
22 upholding the rule of law and the fair and impartial
23 administration of justice. For years, Elsheikh and Kotey evaded
24 justice during ISIS's murderous crusade across wide swaths of
25 Syria and elsewhere. Elsheikh, along with Emwazi and Kotey,

1 committed their shocking and unconscionable crimes in the most
2 cowardly fashion, with their faces covered as they hid behind
3 full masks. This prosecution unmasked the barbaric and sadistic
4 ISIS Beatles. For the first time, the victims had the
5 opportunity to face an unmasked Elsheikh during trial and
6 describe the atrocious crimes that he committed against them.

7 Now, going to the sentencing factors, Your Honor, we
8 believe the nature and seriousness of the offenses are the most
9 compelling sentencing considerations. Elsheikh is the highest
10 ranking and most notorious ISIS member to have ever faced a jury
11 trial in the United States. And, as the evidence at trial
12 demonstrated, Elsheikh, Emwazi, and Kotey helped lead a network
13 of at least nine detention facilities in which 26 civilian
14 hostages from 12 countries were held captive in Syria.

15 His vicious acts of terrorism against the world spread
16 carnage and fear and caused deep despair. And, as we sadly
17 know, these devastating crimes resulted in the deaths of at
18 least eight American, British, and Japanese citizens, among
19 others, including gruesome beheadings that were publicized on a
20 global scale and perversely touted by ISIS propaganda.

21 These victims did absolutely nothing to provoke any of
22 this. Central to the nature and circumstances of these offenses
23 is that these cold and calculated terrorists abducted kind and
24 altruistic souls who were just trying to help people in a region
25 embroiled in conflict.

1 The world recognizes the inviability of civilians.
2 This defendant, along with Kotey and Emwazi, ignored the
3 universal norms of humanity, and inflicted pain and
4 psychological torment on journalists and aid workers who were
5 there to shine a light on the shadowy corners of international
6 conflict, such as American citizens James Foley and
7 Steven Sotloff, and Japanese citizen Kenji Goto; humanitarian
8 aid workers who sought to alleviate suffering among vulnerable
9 populations in a war zone, such as American citizens
10 Peter Kassig and Kayla Mueller, and British citizens
11 David Haines and Alan Henning; and Japanese citizen
12 Haruna Yukawa, who courageously aspired to provide security for
13 his country's companies that were operating in conflict zones.

14 Your Honor, these series of crimes are as grave, as
15 sadistic, and as utterly reprehensible as it gets. The
16 circumstances under which they occurred are the most aggravating
17 they could be. Your Honor may recall that during media
18 interviews, Elsheikh admitted that he hit most of the hostages,
19 that he knows how to inflict pain; that the objective was
20 punishment, and that no one was hit in the face, so they instead
21 would hit in the meat of the muscle.

22 The ISIS Beatles fed on the powerless. The horrors of
23 the hostages' captivity continuously haunted them with
24 meticulous clarity. To paraphrase a line in Dante's "Inferno,"
25 we lack the vocabulary of such pain.

1 Among the macabre details that were revealed at trial,
2 this court and the jury and the public heard about "The
3 Royal Rumble," during which The Beatles placed Federico Motka
4 and David Haines in a cell with James Foley and John Cantlie and
5 ordered them to fight each other, with the threat of being
6 waterboarded for losing the fight. They were malnourished, and
7 The Beatles did a sports-broadcaster-style play by play as they
8 punched each other and passed out. Motka testified that: We
9 were so weak and shattered, we barely had strength to lift our
10 arms.

11 You also heard testimony that Kayla Mueller described
12 to Patricia Chavez Mejia when she was being kept in one tiny
13 cell like a dog kennel. And Lea Mulla testified that Kayla was
14 repeatedly raped by the then-leader of ISIS,
15 Abu Bakr al-Baghdadi.

16 You heard from Marc Marginedas, who testified that
17 The Beatles hated the US and UK hostages the most, including
18 savagely beating Steven Sotloff in front of the other hostages.

19 At the Riverside Prison in Raqqa, for example, and
20 after The Beatles arrived, the hostages were handcuffed to each
21 other. They were prevented from using the toilet. They were
22 begging for medicine. The Beatles set up a camera, even, to
23 ensure that the hostages weren't taking the handcuffs off at
24 night, and The Beatles made James Foley and Peter Kassig stand
25 all night in tight handcuffs.

1 One of the Beatles even drew a sword on Peter Kassig's
2 face with a broken pencil, as if to signal what was going to
3 happen to him. One of the Beatles placed a gun to
4 Marc Marginedas' head, playing games with his mind about whether
5 he would be released or whether he would be executed.

6 And the Beatles' torture also included sadistic mind
7 games, such as forcing the hostages to memorize the words to
8 "Hotel Osama," the parody song where the lyrics went something
9 like, "You will never leave. If you try, you will die
10 Mr. Bigley style," which is a reference to British citizen
11 Kenneth Bigley, who was beheaded in 2004 by al-Zarqawi, a former
12 senior Al-Qaeda official. And while The Beatles were forcing
13 the hostages to sing this parody, they were laughing and they
14 were demanding "louder, louder."

15 You also heard that The Beatles once threatened to cut
16 out Frida Saide's Swiss colleague's tongue. They once beat a
17 male hostage badly outside of a hall, such that
18 Patricia Chavez Mejia saw blood stains later. Frida Saide said
19 that The Beatles were genuine psychopaths without any moral
20 values.

21 They even showed -- on their laptop, they went around
22 the cell and showed an image of a Russian hostage who was killed
23 and shown in that photograph with a bullet wound through his
24 head. And they did this to silence the other hostages who would
25 be released from talking to the media, and told them that if

1 their country didn't negotiate, this is what would happen to
2 them.

3 We heard today from Daniel Rye Ottosen, and he
4 testified at trial that on his 25th birthday, The Beatles came
5 in his cell and told him that he had a stupid mom who asked them
6 to greet him for his birthday. And so one of the Beatles kicked
7 him in the ribs 25 times in the same spot. Another Beatle at
8 another point hit Daniel so hard with a club that his vision
9 flickered.

10 And Ringo, who we proved at that trial was, in fact,
11 El Shafee Elsheikh, told him, when the hostages were forced to
12 kneel at the edge of the grave where the Syrian national was
13 executed: Don't look at me, you'll regret it. And The Beatles
14 put him back in the car and whispered to Ottosen that he would
15 be next.

16 Your Honor also saw throughout this trial that
17 Elsheikh's conduct didn't just stop after the hostages were
18 either released or killed in February of 2015. Before then, in
19 July of 2014, Your Honor heard a voicemail that he left for his
20 brother, who was in the UK. And he described, as this
21 17th Division battle was unfolding, as ISIS was seeking to claim
22 the base of the 17th Division of the Syrian Army, that, "The
23 brothers have engaged in combat and they brought back heads to
24 the city." And he described, "There's many heads; this is just
25 a couple I took a photo of." And he sent his brother images of

1 what appeared to be severed heads on poles on or about
2 July 25th, 2014. And that was just weeks before the first
3 American hostage, James Foley, was beheaded.

4 After the hostages were either released or killed,
5 Elsheikh continued to serve within the hierarchy and upper
6 echelons of ISIS. And that existed through his capture in
7 January of 2018. As Your Honor previously alluded to, Omer Kuzu
8 testified at trial, and he indicated that in the fall of 2016,
9 Elsheikh was coming to work at the ISIS central technical office
10 in Syria, and he was working on a secure operating system that
11 was to be used for ISIS leadership, among others, to communicate
12 securely with each other so that their messages would not be
13 intercepted by intelligence agencies.

14 And I think it's a reasonable inference to draw,
15 Your Honor, that Elsheikh wasn't just leaving ISIS to go into
16 Turkey as a former ISIS member. He was meeting with Kuzu's
17 brother-in-law right before he tried to leave ISIS territory,
18 and his brother-in-law, as you'll recall, was the head of
19 Hijrah, and his job entailed bringing ISIS members in and out of
20 Syria for ISIS operations, which may include attacks on behalf
21 of ISIS outside of Syria.

22 History and characteristics of the defendant, there's
23 nothing in Elsheikh's background that can even remotely explain
24 or justify his cowardly actions against the hostages, which were
25 driven by hate and extreme cruelty. There's just no

1 justification conjurable by the human mind that can explain any
2 of these crimes.

3 Page 12 of Elsheikh's position on sentencing states, in
4 part, that Elsheikh enjoyed the love and comfort of a large
5 extended family, all of whom took turns looking after each
6 other. He also stated that he never lacked a playmate or was
7 left to fend for himself. That is the height of irony and
8 hypocrisy, and exactly what Elsheikh tried to do to the hostages
9 that he and his co-conspirators held captive and tortured.
10 Well, he failed. Rather than fend for themselves, the hostages
11 took care of each other with boundless compassion. The
12 defendant united them, and, as we have all seen, united their
13 families and loved ones.

14 The legacy of the victims will forever carry on, while
15 this defendant will have a lifetime in prison to reflect upon
16 the immeasurable physical damage and psychological torment that
17 he inflicted on such compassionate and altruistic souls.

18 Turning to affording adequate deterrence to criminal
19 conduct, sending this defendant to prison for the rest of his
20 life will ensure that he can never again carry out the
21 diabolical conduct in which he engaged, and can never harm
22 anyone again.

23 As for general deterrence, Your Honor, the life terms
24 of imprisonment this court will impose in this case will send an
25 unmistakable message that hostage-taking is a scourge on the

1 entire international community, and that these atrocities will
2 be met with fair but swift justice in the United States. For
3 any hostage-taker, the passage of time will offer you no escape.

4 The imposition of eight concurrent life sentences will
5 also ensure that there are no unwarranted sentencing disparities
6 between Elsheikh's sentence and the sentence that this court
7 imposed on his co-defendant, Alexandra Kotey, who pleaded guilty
8 in this very courtroom nearly one year ago. Elsheikh remains
9 defiantly remorseless and unrepentant, and, like Kotey, should
10 spend the rest of his life in prison.

11 Finally, Your Honor, turning to protecting the public
12 from further crimes of Elsheikh, a life sentence is also needed
13 to protect the public from further crimes of him, who he has
14 demonstrated a complete respect [sic] for the law and human
15 dignity, and Elsheikh has exhibited a callous disregard for the
16 victims that he and his co-conspirators ruthlessly victimized.

17 The resilience, courage, and perseverance that these
18 victim families and the released hostage victims have
19 demonstrated in the face of deep anguish is exemplary. But they
20 will forever carry the emotional scars of relentless
21 psychological and physical pain that will never heal, an
22 emptiness in their hearts that will never be filled.

23 As Your Honor heard, today is a solemn day of
24 remembrance, and a painful anniversary. Eight years ago, on
25 August 19, 2014, the world was devastated by images depicting

1 the death of James Foley. He, like all of the victims in this
2 case, knew the importance of giving a voice to the voiceless.
3 And as we heard from multiple released hostages who testified at
4 trial, James Foley would be the one who would take it on the
5 neck for everyone else. He would bang on the door of his cell
6 demanding more food for his fellow hostages, because they were
7 always hungry. They weren't given enough food. And he would
8 ask for more water and blankets for everyone, to keep their
9 spirits up so that they would never be broken. That was
10 James Foley.

11 Some of the most compelling pieces of evidence in this
12 case are from the words of the victims themselves, as they were
13 being held by the ISIS Beatles in chambers of terror. Turning
14 back to Dante's "Inferno," there's a line in the poem that
15 states, "There's no greater sorrow than to recall happiness in
16 times of misery."

17 And as I conclude, Your Honor, I would just like to
18 read a few lines of each of the portions of these letters to
19 illustrate the victims' unbelievable resolve and the pure love
20 that they had for their families, in the most unimaginable
21 circumstances, as a result of what this defendant and his
22 co-conspirators put them through. And these are lines,
23 Your Honor, that, for the most part, are different than the
24 lines that we put into the record for Kotey's sentencing.

25 So if Your Honor will permit me, I'll just read a few.

1 THE COURT: Yes, you may proceed.

2 MR. PAREKH: Before I get to the letters -- and
3 Your Honor heard this earlier. James Foley's letter was
4 dictated to Daniel Rye Ottosen, and that was because he didn't
5 want to bother the other hostages, so he never tried to send one
6 out. And John Cantlie told him: Jim, send one out with Daniel.
7 And so it took Daniel three weeks to memorize before he was
8 released into Turkey in June of 2014. And after being released,
9 as Your Honor heard, he called the Foley family and recited
10 Jim's letter. It was the first and only time that Daniel said
11 it out loud, in which he described it as delivering a good-bye
12 to his mother, to his parents.

13 Kayla Mueller stated in her letter: "Just the thought
14 of you all sends me into a lot of tears. If you could say I've
15 suffered at all throughout this whole experience, it is only
16 knowing how much suffering I have put you all through. By God,
17 by your prayers, I have felt tenderly cradled in free fall.
18 I've been shown in darkness, light, and have learned that even
19 in prison, one can be free. I am grateful. I do not want the
20 negotiations for my release to be your duty. If there's any
21 other option, take it, even if it takes more time. The thought
22 of your pain is the source of my own. Simultaneously, the hope
23 of our reunion is the source of my strength. By God's will, we
24 will be together soon. All my everything, Kayla."

25 Steven Sotloff wrote: "Happy Mother's Day, Mommy. I

1 think we share May 11th this year. You deserve so much more
2 than just one day dedicated to you. You both worked so hard to
3 make sure I was okay. I hope you will have no regrets as
4 parents, because you always went above and beyond for me. Thank
5 you. I never meant to cause you pain. I am sorry. I love you.
6 All my love, Steven."

7 Peter Kassig wrote: "The first thing I want to say is
8 thank you, both to you and Mom, for everything you have done for
9 me as parents, for everything you have taught me, shown me, and
10 experienced with me. I know I've given you and Mom a fair bit
11 of trouble over the years, but not a day goes by that I don't
12 think of you both, how much I love you, how much I miss you, and
13 what a wonderful time I had with you both making many good
14 memories we have as a family."

15 "Don't worry, Dad. If I go down, I won't go down
16 thinking anything but what I know to be true, that you and Mom
17 love me more than the moon and the stars. Just know that I am
18 with you, every stream, every lake, every field and river, in
19 the woods and in the hills, in all the places you showed me. I
20 love you, Bock (ph)," referring to Peter's childhood nickname.

21 Rather than becoming martyrs to their monstrous cause,
22 Elsheikh and Kotey have been fairly and impartially convicted in
23 an open courtroom of their barbaric crimes. We recognize that
24 the incalculable pain and deep despair that everyone who has
25 been victimized by the ISIS Beatles have endured, and continue

1 to endure, their losses can never be erased. They can never be
2 made whole. But through the prosecution of the ISIS Beatles and
3 this court's impartiality from beginning to end, the victim
4 families, the released hostages, and their loved ones have
5 finally obtained a measure of justice through humanity by giving
6 Elsheikh and Kotey the fair and open legal process that reflects
7 the enduring strength of this nation and its core values.

8 Elsheikh and Kotey will never be able to hurt anyone
9 ever again. They will spend the rest of their lives in prison,
10 and that is an appropriate and just ending. Thank you.

11 THE COURT: Mr. Ellis?

12 MR. DEUBLER: Deubler, Your Honor.

13 THE COURT: Sorry. Mr. Deubler.

14 MR. DEUBLER: Thank you, Your Honor. Your Honor, the
15 conduct performed by ISIS in this case is horrific, tragic,
16 needless, and just simply inexcusable. It has been adequately
17 addressed in the multi-week trial, in Mr. Kotey's sentencing,
18 and by the government just now, so there's no need for me to
19 readdress it here. Suffice it to say that the surviving victims
20 and the family members of those lost will have physical and
21 emotional scars that will never heal, and will last into the
22 next generation.

23 Here, Mr. Elsheikh faces multiple mandatory life
24 sentences, and there's no argument from the defense that these
25 sentences should be otherwise. As such, the only issue before

1 the Court now, in sentencing Mr. Elsheikh, is whether to provide
2 the BOP a recommendation regarding his place of confinement.

3 As part of our position on sentencing, we submitted the
4 declaration of Jack Donson, a 23-year veteran of the BOP's
5 security classification, correctional programs, treatment, and
6 reentry departments. According to Mr. Donson, absent a judicial
7 recommendation to the contrary, quote, "Mr. Elsheikh faces the
8 likely possibility of being designated to Florence ADX, based on
9 his simple status as an international terrorist, in combination
10 with the SAMs."

11 Our position on sentencing, and Mr. Donson's
12 declaration, includes details on Florence. But in brief, here,
13 ADX Florence is a prison designed after two BOP guards were
14 murdered by inmates. As such, those who are sent to that prison
15 are done so primarily out of concern for their behavior, posing
16 a serious flight risk, or will distract from the running of the
17 institution.

18 Inmates are locked in a small, approximately
19 75-square-foot cell, 23 hours a day, aside from being shackled
20 in handcuffs and leg irons to be moved to a caged shower area or
21 rec area. Recreation, when offered, is offered one hour daily
22 based on the availability of staff, and conducted in a small
23 caged area. All programming is done on closed circuit, from
24 what I understand, black and white televisions.

25 According to Mr. Donson, under the BOP's own security

1 assessment scoring system, Mr. Elsheikh's score is commensurate
2 with a minimum security because he is void of the typical
3 classification factors that elevate a person's classification,
4 such as serious history of violence, escape, and predatory
5 behavior. Mr. Donson notes that the BOP specifically excludes
6 the instant offense from their scoring criteria.

7 Also submitted to the Court was a very brief letter
8 from the Alexandria ADC detailing that Mr. Elsheikh has had no
9 serious major disciplinary infractions. According to the BOP's
10 programming statement regarding inmate security designation and
11 custody classification, ADX Florence units are designed for male
12 inmates who have demonstrated an inability to function in the
13 less restrictive environment.

14 Again, Your Honor, to date, there is simply no evidence
15 to demonstrate that Mr. Elsheikh has been anything but a model
16 prisoner since being detained. There have been no complaints by
17 the United States Marshal Service about the violations of his
18 SAMs, and there's been no complaint, as evidenced by the ADC's
19 letter to this court, that he's incurred any major disciplinary
20 infraction.

21 A reasonable alternative exists for those inmates that
22 must be designated to secure facilities that will comply with
23 the requirements of SAMs. And just for the benefit of everyone
24 here, SAMs, the Special Administrative Measures put in place by
25 the Attorney General that control the flow of communication to

1 Mr. Elsheikh, from Mr. Elsheikh, with the outside world.

2 The BOP operates two CMUs specifically designed for
3 inmates whose activities or offenses trigger a need for tightly
4 monitored communications with the outside world. These
5 Communication Management Units, USP Marion and USP Terra Haute,
6 according to Mr. Donson's opinion, quote, "unlike Florence ADX,
7 CMUs allow programming and some human interaction in an
8 administrative high security environment that does not
9 negatively affect" -- "that carries with it no negative effects
10 normally associated with extreme confinement."

11 We ask that the Court make the recommendation to the
12 BOP that is in line with the proffered recommendation that
13 Mr. Donson submitted to this Court, found on page 20 of our
14 position on sentencing.

15 Thank you very much, Your Honor.

16 THE COURT: Mr. Parekh, do you wish to respond?

17 MR. PAREKH: Briefly, Your Honor. If Your Honor
18 recognized the declaration from Mr. Donson that was submitted in
19 this particular sentencing hearing, or in connection with this
20 sentencing hearing, it's because it's nearly identical to the
21 one that Mr. Kotey submitted. In fact, Mr. Donson is the same
22 declarant for both of these cases.

23 And what I saw in the materials that the defense
24 submitted was Mr. Donson's résumé, and on his résumé he listed
25 his website. Your Honor, I think it's important to point this

1 out. And when you go to his website, the first thing that you
2 see is a statement from Mr. Donson that states, in part:
3 "Unfortunately, Lady Justice is not blind in our federal justice
4 system today. Anyone who gets caught up in the federal justice
5 system quickly comes to the realization how unfair this system
6 is to a defendant."

7 Clearly Mr. Donson has never been in this court and has
8 never attended this trial.

9 In Mr. Kotey's sentencing, Your Honor stated on page 87
10 of the transcript: "I don't agree with your expert, or with
11 anyone else, that BOP's designations are reflexive."

12 BOP is legally required, as Your Honor knows, to follow
13 the process outlined in 18 U.S.C. 3621, and their own
14 regulations or policies as it relates to the designation
15 process. And similar to the Court's --

16 THE COURT: Remind me what I said in the Kotey
17 sentencing.

18 MR. PAREKH: What you said in the Kotey sentencing is
19 that you didn't agree with their expert, or with anyone, that
20 BOP's process is reflexive.

21 THE COURT: All right. Go on. They do have to go
22 through a process.

23 MR. PAREKH: They have to go through a process,
24 Your Honor. And in the end, as Your Honor stated, the decision
25 as to where the defendant begins to serve his sentence

1 appropriately rests with the Bureau of Prisons, which has more
2 complete information in connection with the designation process.

3 And some obvious distinctions, Your Honor. Your Honor
4 did not recommend that Kotey not go to ADX, and so what
5 meritorious reason would there be to make any different
6 recommendation in Elsheikh's case? While Kotey is not more or
7 less legally culpable than Elsheikh, as they both committed
8 horrendous crimes, the main arguments that Kotey's counsel had
9 are inapplicable to Elsheikh.

10 Elsheikh didn't plead guilty and accept responsibility.
11 Elsheikh obstructed justice, as Your Honor found, by submitting
12 a false sworn declaration to the Court. Elsheikh did not meet
13 with any of the victim families or released hostage victims.
14 They would love to meet with him and get answers to their
15 questions about what happened to their loved ones, but he didn't
16 do that. And that's his choice. But Mr. Kotey's counsel argued
17 that he's doing all these things. He's part of the process,
18 he's meeting with the victim families, he pled guilty. Elsheikh
19 did none of those things. And in Kotey's case, notwithstanding
20 all of those things, Your Honor declined to make any such
21 recommendation.

22 And so for those reasons, Your Honor, we don't think
23 that the Court should wade into that territory here, and we
24 think that the decision appropriately rests with the
25 professionals at BOP. Thank you.

1 THE COURT: All right. Mr. Deubler, does your client
2 wish to allocute at this time?

3 MR. DEUBLER: No, Your Honor.

4 THE COURT: All right. The matter is now before the
5 Court for imposition of sentence. Mr. El Shafee Elsheikh, come
6 to the podium.

7 Mr. Elsheikh, you stand convicted by a jury, after
8 hearing two weeks of testimony, of eight very serious crimes. I
9 presided over that trial, so I'm aware of the evidence that was
10 presented.

11 The law requires that I consider a variety of factors
12 in imposing an appropriate sentence. First, I need to consider
13 the nature and circumstances of the offense and the history and
14 characteristics of the defendant, and I have done that. I think
15 the summary that Mr. Parekh made of the conduct was accurate,
16 accurately reflects the testimony that was submitted at trial,
17 and I'm not going to repeat it.

18 What I am going to do is to be clear by characterizing
19 it. The behavior of this defendant and his co-defendant can
20 only be described as horrific, barbaric, brutal, callous, and,
21 of course, criminal. So the need for the sentence to impose
22 respect for the law and to provide for just punishment for the
23 offense is an important factor the Court must consider, and I
24 think that's principal among the factors that leads me to impose
25 the sentence that I will do in a moment.

1 The second factor that I mentioned was the
2 characteristics of the defendant, and that's fully set out in
3 the presentence investigation report. And indeed, the
4 Bureau of Prisons will have that. There's nothing in his
5 background that would suggest that, as he grew up in Britain, he
6 was brutalized horrifically or barbarically by the British
7 system or by Britain. He wasn't. He had a pretty decent
8 childhood, not marked by brutality and cruelty.

9 I also have to consider that the sentence I impose
10 should reflect and provide for respect for the law, and provide
11 for just punishment for the offense. And it has to afford
12 deterrence; that is, it must stand as a beacon, as a warning to
13 others that if you do this, there will be severe consequences.

14 I have considered all of these factors. I've also
15 considered the guidelines. The guidelines for several of the
16 counts are mandatory life, but I'm not bound by that. I could
17 impose something other than that. I cannot impose any capital
18 sentence, because the government hasn't sought that. And I have
19 considered the various kinds of sentences.

20 In the end, it is the judgment of this court -- and
21 it's a judgment, it's not a mathematical calculation. I know we
22 went through adding offense levels and so forth, but sentencing
23 is not a mathematical calculation. It's not mechanical, and
24 it's never completely automatic. It has to consider these
25 factors that I have gone through: The need to impose a sentence

1 that promotes respect for the law, that provides just punishment
2 for the crime, and that affords adequate deterrence, both
3 deterrence for the individual being sentenced and general
4 deterrence; that is, as I think I said, it must be a beacon, a
5 warning to others not to engage in this sort of conduct.

6 So it is the judgment of this court,
7 Mr. El Shafee Elsheikh, that you be committed to the custody of
8 the Bureau of Prisons, with respect to Counts 1, 2, 3, 4, 5, 6,
9 7, and 8, all of them, I'm going to impose on you a sentence of
10 life. There is no parole in the federal system. And those life
11 sentences will be served concurrently, not consecutively. I've
12 always thought that was silly, when judges do that. So they
13 will be served concurrently.

14 You are to pay a \$100 special assessment for each of
15 the counts, for a total of \$800. I don't impose a punitive fine
16 because I don't see any evidence in the presentence report that
17 you have the capacity to pay a sentence. But restitution is
18 required.

19 Do you have a restitution order, Mr. Parekh?

20 MR. PAREKH: We do not, Your Honor. We've consulted
21 with the victims, and no victim sought restitution in this
22 matter.

23 THE COURT: All right. So you're not requesting the
24 entry of a restitution order?

25 MR. PAREKH: That's correct, Your Honor.

1 THE COURT: All right. The defendant has asked that I
2 make a recommendation that would avoid his being sent to
3 Colorado. I declined to do so with Mr. Kotey, and for the same
4 reasons, I decline to do so in this case.

5 The Bureau of Prisons will reach a determination, and I
6 think I heard you say, Mr. Deubler, that they go through a
7 process which does not necessarily include the offenses of
8 conviction. Did you say that?

9 MR. DEUBLER: For the security classification
10 component.

11 THE COURT: Right. And that's one factor, the security
12 classification.

13 MR. DEUBLER: Correct, Your Honor.

14 THE COURT: But they will go through a process and
15 consider where he should go. And I am not going to interfere in
16 that process in this case. I have in some cases. I frequently
17 recommend sending a defendant to a place where he will be near
18 his family, in circumstances. Not in cases of this magnitude,
19 but I have. And I will continue to do so.

20 But in this case I see no persuasive reason to
21 interfere with the Bureau of Prisons' normal process. Indeed, I
22 sentenced Mr. Kotey when, Mr. Parekh?

23 MR. PAREKH: April 29th.

24 THE COURT: So has he been designated?

25 MR. PAREKH: He has not been finally designated,

1 Your Honor. I believe he is on the move, or may be on the move,
2 but I don't believe there is a final ultimate designation yet.

3 THE COURT: All right. And he's currently at the
4 Alexandria Detention Center?

5 MR. PAREKH: Your Honor, he may be within the
6 Eastern District of Virginia at --

7 THE COURT: Somewhere?

8 MR. PAREKH: Somewhere else. It could be
9 Northern Neck. But I'm not absolutely certain of that standing
10 here at this moment.

11 THE COURT: Have I omitted anything from the sentence,
12 Mr. Parekh?

13 MR. PAREKH: Yes, Your Honor. The defendant has a
14 right to appeal within 14 days.

15 THE COURT: Yes, I will mention that. Anything other
16 than that?

17 MR. PAREKH: Your Honor, I take it you would decline to
18 impose any supervised release conditions?

19 THE COURT: I see no purpose in that. I don't expect
20 he will be released on supervision.

21 MR. PAREKH: Yes, we agree, just to make it clear.

22 THE COURT: If that occurs, a judge will have to impose
23 conditions. And I don't have any reason to believe that that
24 would happen, so I'm not going to do it.

25 Any objection to that, Mr. Deubler?

1 MR. DEUBLER: No, sir.

2 THE COURT: All right. Mr. El Shafee Elsheikh, you
3 have an absolute right to appeal your conviction and sentence to
4 the Court of Appeals for the Fourth Circuit. You can either ask
5 me to note that appeal now or you can have 10 -- is it 10 now,
6 or 14 days now?

7 MR. PAREKH: It's 14.

8 THE COURT: 14 days from today in which to note an
9 appeal.

10 Which is it, Mr. Deubler?

11 MR. DEUBLER: He would note his appeal now, Your Honor.

12 THE COURT: All right. I'll direct the clerk to note
13 the appeal.

14 Anything further in this matter today?

15 MR. PAREKH: Not from the government, Your Honor.

16 THE COURT: Mr. Deubler?

17 MR. DEUBLER: Very, very, very briefly, Your Honor. As
18 we just covered, he will be noting his appeal, and I believe, as
19 part of Mr. Elsheikh's appeal, he will be alleging certain
20 ineffective grounds that would disqualify his current lawyers.
21 I say all that, if we could ask the Court that we hold off on
22 his transfer to the Bureau of Prisons for a month so that in
23 case new counsel is appointed, they can meet him.

24 THE COURT: No.

25 MR. DEUBLER: Understood.

1 THE COURT: There's nothing I have before me, and I
2 would be surprised if there could be a credible claim of
3 ineffective assistance of counsel. You all -- is Ms. Ginsberg
4 here? Yes, you're here too. I think you have been diligent,
5 all three of you, including my non-namesake, Mr. Ellis, you've
6 been diligent and you've done what the system expects you to do.
7 You've been zealous in the defense of your client. But
8 ineffective assistance of counsel claims, sometimes they're
9 valid, sometimes they're not. Sometimes they are efforts to
10 game the system. I don't know.

11 And no, he's not going to stay here. The Alexandria
12 Detention Center has limited space, and the Bureau of Prisons
13 can do as they wish from here on out.

14 MR. DEUBLER: Understood, Your Honor.

15 THE COURT: Anything further from you, Mr. Parekh?

16 MR. PAREKH: No, Your Honor.

17 THE COURT: Mr. Deubler?

18 MR. DEUBLER: No, Your Honor.

19 THE COURT: I do want to thank counsel for your
20 cooperation during this lengthy proceeding. It's been very
21 important. And I want to emphasize, as I said earlier, we
22 should not forget what happened here. We should not forget the
23 victims, the victims' families, and the actions of the
24 defendant. We should not forget this. This is a significant
25 episode in the history of our country and our justice system,

1 and I hope it should be memorialized as to what happened, what
2 the families said, and what the lawyers said.

3 All right. Just a moment.

4 Once again, I thank counsel for your cooperation.
5 Court stands in recess.

6 (Off the record at 11:50 a.m.)
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15 **CERTIFICATE OF OFFICIAL COURT REPORTER**
16

17 I, Rebecca Stonestreet, certify that the foregoing is a
18 correct transcript from the record of proceedings in the
19 above-entitled matter.
20
21
22

23 ____//Rebecca Stonestreet//____

____10/27/22____

24 **SIGNATURE OF COURT REPORTER**

DATE
25